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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

MY DAILY CHOICE, INC., a Nevada
corporation;

Plaintiff,

v.

DANIELLE LITUSKI, an individual; CHAD
LITUSKI, an individual; and DOES 1-20, and
ROE ENTITIES 1-20, inclusive,

Defendants.

Case No. 2:20-CV-02232-JAD-NJK

**STIPULATED PROTECTIVE
ORDER**

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Local Rule IA 10-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

1 **2. DEFINITIONS**

2 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
3 information or items under this Order.

4 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
5 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
6 of Civil Procedure 26(c).

7 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
8 well as their support staff).

9 2.4 Designating Party: a Party or Non-Party that designates information or items that it
10 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
11 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

12 2.5 Disclosure or Discovery Material: all items or information, regardless of the
13 medium or manner in which it is generated, stored, or maintained (including, among other things,
14 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
15 responses to discovery in this matter.

16 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
17 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or
18 as a consultant in this action, (2) is not a past or current employee of a Party or of a Party’s
19 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or
20 of a Party’s competitor.

21 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or
22 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another
23 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by
24 less restrictive means.

25 2.8 House Counsel: attorneys who are employees of a party to this action. House
26 Counsel does not include Outside Counsel of Record or any other outside counsel.

27 2.9 Non-Party: any natural person, partnership, corporation, association, or other legal
28 entity not named as a Party to this action.

2.10 Outside Counsel of Record: attorneys who are not employees of a party to this action but are retained to represent or advise a party to this action and have appeared in this action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

2.11 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this action.

2.13 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.14 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

2.16 Related Case: related cases are *My Daily Choice, Inc. v. Butler, et al.* Case No. 2:20-cv-02178-JAD-NJK; *My Daily Choice, Inc. v. Donnell*, Case No. 2:20-cv-02225-JAD-NJK; *My Daily Choice, Inc. v. Jackson*, Case No. 2:20-cv-02237-JAD-NJK; and *My Daily Choice, Inc. v. Lambert*, Case No. 2:20-cv-02228-JAD-NJK. No other cases shall be considered a Related Case to this matter absent the written approval of all Parties to this matter.

3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any Confidential Information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material. However, the protections conferred by this Stipulation and Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as

1 a result of publication not involving a violation of this Order, including becoming part of the public
2 record through trial or otherwise; and (b) any information known to the Receiving Party prior to
3 the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained
4 the information lawfully and under no obligation of confidentiality to the Designating Party. Any
5 use of Protected Material at trial shall be governed by a separate agreement or order.

6 **4. DURATION**

7 Even after final disposition of this litigation, the confidentiality obligations imposed by this
8 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
9 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims
10 and defenses in this action, with or without prejudice; and (2) final judgment herein after the
11 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
12 including the time limits for filing any motions or applications for extension of time pursuant to
13 applicable law.

14 **5. DESIGNATING PROTECTED MATERIAL**

15 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
16 or Non-Party that designates information or items for protection under this Order must take care
17 to limit any such designation to specific material that qualifies under the appropriate standards. To
18 the extent it is practical to do so, the Designating Party must designate for protection only those
19 parts of material, documents, items, or oral or written communications that qualify – so that other
20 portions of the material, documents, items, or communications for which protection is not
21 warranted are not swept unjustifiably within the ambit of this Order.

22 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
23 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
24 unnecessarily encumber or retard the case development process or to impose unnecessary expenses
25 and burdens on other parties) may expose the Designating Party to sanctions.

26 If it comes to a Designating Party's attention that information or items that it designated
27 for protection do not qualify for protection at all or do not qualify for the level of protection initially
28 asserted, that Designating Party must promptly notify all other parties that it is withdrawing the

1 mistaken designation.

2 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
3 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
4 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
5 designated before the material is disclosed or produced.

6 Designation in conformity with this Order requires:

7 (a) for information in documentary form (e.g., paper or electronic documents, but
8 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
9 affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
10 ONLY” to each page that contains protected material. If only a portion or portions of the material
11 on a page qualifies for protection, the Producing Party also must clearly identify the protected
12 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
13 portion, the level of protection being asserted.

14 A Party or Non-Party that makes original documents or materials available for inspection
15 need not designate them for protection until after the inspecting Party has indicated which material
16 it would like copied and produced. During the inspection and before the designation, all of the
17 material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –
18 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants
19 copied and produced, the Producing Party must determine which documents, or portions thereof,
20 qualify for protection under this Order. Then, before producing the specified documents, the
21 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY
22 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) to each page that contains Protected Material.
23 If only a portion or portions of the material on a page qualifies for protection, the Producing Party
24 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
25 margins) and must specify, for each portion, the level of protection being asserted.

26 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
27 Designating Party identify on the record, before the close of the deposition, hearing, or other
28 proceeding, all protected testimony and specify the level of protection being asserted. When it is

1 impractical to identify separately each portion of testimony that is entitled to protection and it
2 appears that substantial portions of the testimony may qualify for protection, the Designating Party
3 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right
4 to have up to 30 days to identify the specific portions of the testimony as to which protection is
5 sought and to specify the level of protection being asserted. Only those portions of the testimony
6 that are appropriately designated for protection within the 30 days shall be covered by the
7 provisions of this Stipulated Protective Order. Alternatively, a Designating Party may specify, at
8 the deposition or up to 30 days afterwards if that period is properly invoked, that the entire
9 transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
10 ATTORNEYS’ EYES ONLY.”

11 Parties shall give the other Parties notice if they reasonably expect a deposition, hearing or
12 other proceeding to include Protected Material so that the other Parties can ensure that only
13 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”
14 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
15 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
16 – ATTORNEYS’ EYES ONLY.”

17 Transcripts containing Protected Material shall have an obvious legend on the title page
18 that the transcript contains Protected Material, and the title page shall be followed by a list of all
19 pages (including line numbers as appropriate) that have been designated as Protected Material and
20 the level of protection being asserted by the Designating Party. The Designating Party shall inform
21 the court reporter of these requirements. Any transcript that is prepared before the expiration of a
22 30-day period for designation shall be treated during that period as if it had been designated
23 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise
24 agreed. After the expiration of that period, the transcript shall be treated only as actually
25 designated.

26 (c) for information produced in some form other than documentary and for any other
27 tangible items, that the Producing Party affix in a prominent place on the exterior of the container
28 or containers in which the information or item is stored the legend “CONFIDENTIAL” or

1 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions of
 2 the information or item warrant protection, the Producing Party, to the extent practicable, shall
 3 identify the protected portion(s) and specify the level of protection being asserted.

4 5.3 Inadvertent Failures to Designate. If the Disclosing Party corrects a failure to
 5 designate qualified information within 10 days of discovering the inadvertent failure, that
 6 inadvertent failure to designate qualified information or items does not, standing alone, waive the
 7 Designating Party’s right to secure protection under this Order for such material. Upon timely
 8 correction of a designation, the Receiving Party must make reasonable efforts to assure that the
 9 material is treated in accordance with the provisions of this Order.

10 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

11 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
 12 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
 13 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
 14 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
 15 challenge a confidentiality designation by electing not to mount a challenge promptly after the
 16 original designation is disclosed.

17 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
 18 by providing written notice of each designation it is challenging and describing the basis for each
 19 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
 20 recite that the challenge to confidentiality is being made in accordance with this specific paragraph
 21 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must
 22 begin the process by conferring directly (in voice to voice dialogue; other forms of communication
 23 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging
 24 Party must explain the basis for its belief that the confidentiality designation was not proper and
 25 must give the Designating Party an opportunity to review the designated material, to reconsider
 26 the circumstances, and, if no change in designation is offered, to explain the basis for the chosen
 27 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
 28 has engaged in this meet and confer process first or establishes that the Designating Party is

1 unwilling to participate in the meet and confer process in a timely manner.

2 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
3 intervention, the Designating Party shall file and serve a motion to retain confidentiality in
4 accordance with any applicable Local Rules within 21 days of the initial notice of challenge or
5 within 14 days of the parties agreeing that the meet and confer process will not resolve their
6 dispute, whichever is earlier. Each such motion must be accompanied by a competent declaration
7 affirming that the movant has complied with the meet and confer requirements imposed in the
8 preceding paragraph. Failure by the Designating Party to make such a motion including the
9 required declaration within 21 days (or 14 days, if applicable) shall automatically waive the
10 confidentiality designation for each challenged designation. In addition, the Challenging Party may
11 file a motion challenging a confidentiality designation at any time if there is good cause for doing
12 so, including a challenge to the designation of a deposition transcript or any portions thereof. Any
13 motion brought pursuant to this provision must be accompanied by a competent declaration
14 affirming that the movant has complied with the meet and confer requirements imposed by the
15 preceding paragraph.

16 The burden of persuasion in any such challenge proceeding shall be on the Designating
17 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
18 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
19 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to
20 file a motion to retain confidentiality as described above, all parties shall continue to afford the
21 material in question the level of protection to which it is entitled under the Producing Party's
22 designation until the court rules on the challenge.

23 7. ACCESS TO AND USE OF PROTECTED MATERIAL

24 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
25 produced by another Party or by a Non-Party in connection with this case or a Related Case only
26 for prosecuting, defending, or attempting to settle this litigation or litigation in a Related Case
27 provided that this protective order is also entered in the relevant Related Case. Such Protected
28 Material may be disclosed only to the categories of persons and under the conditions described in

1 this Order. When the litigation has been terminated, a Receiving Party must comply with the
2 provisions of section 13 below (FINAL DISPOSITION).

3 Protected Material must be stored and maintained by a Receiving Party at a location and in
4 a secure manner¹ that ensures that access is limited to the persons authorized under this Order.

5 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
6 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
7 information or item designated “CONFIDENTIAL” only to:

8 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees
9 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information
10 for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that
11 is attached hereto as Exhibit A;

12 (b) the officers, directors, and employees (including House Counsel) of the Receiving Party
13 to whom disclosure is reasonably necessary for this litigation and who have signed the
14 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

15 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
16 reasonably necessary for this litigation and who have signed the “Acknowledgment and
17 Agreement to Be Bound” (Exhibit A);

18 (d) the court and its personnel;

19 (e) court reporters and their staff, professional jury or trial consultants, and Professional
20 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the
21 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

22 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
23 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
24 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed
25 deposition testimony or exhibits to depositions that reveal Protected Material must be separately
26 bound by the court reporter and may not be disclosed to anyone except as permitted under this

27 _____
28 ¹ It may be appropriate under certain circumstances to require the Receiving Party to store any
electronic Protected Material in password-protected form.

1 Stipulated Protective Order.

2 (g) the author or recipient of a document containing the information or a custodian or other
3 person who otherwise possessed or knew the information.

4 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
5 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
6 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
7 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

8 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees
9 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information
10 for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that
11 is attached hereto as Exhibit A;

12 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this
13 litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
14 and (3) who have been identified in writing to the Disclosing Party in advance, and are not or
15 anticipated to become owners, officers, directors, employees, or affiliates of a Party or a competitor
16 of a Party;

17 (c) the court and its personnel;

18 (d) court reporters and their staff, professional jury or trial consultants, and Professional
19 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the
20 “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

21 (e) the author or recipient of a document containing the information or a custodian or other
22 person who otherwise possessed or knew the information.

23 7.4 Procedures for Objecting to Disclosure of “HIGHLY CONFIDENTIAL –
24 ATTORNEYS’ EYES ONLY” Information or Items to Experts.

25 (a) Unless otherwise ordered by the court or agreed to in writing by the Designating Party,
26 a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that
27 has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to
28 paragraph 7.3(c) must first provide written notice to the Designating Party that (1) identifies the

1 general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information
 2 that the Receiving Party intends to disclose to the Expert, (2) sets forth the full name of the Expert
 3 and the city and state of his or her primary residence, (3) attaches a copy of the Expert’s current
 4 resume, (4) identifies the Expert’s current employer(s), and (5) provides a list of all other cases in
 5 which, during the previous four years, the witness testified as an expert at trial or by deposition.

6 (b) A Party that provides the information specified in the preceding respective paragraphs
 7 may disclose the subject Protected Material to the identified Expert unless, within three days of
 8 delivering the request, the Party receives a written objection from the Designating Party. Any such
 9 objection must set forth in detail the grounds on which it is based.

10 (c) A Party that receives a timely written objection must meet and confer with the
 11 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement
 12 within seven days of the written objection. If no agreement is reached, the Party seeking to make
 13 the disclosure to the Expert may file a motion seeking permission from the court to do so. Any
 14 such motion must describe the circumstances with specificity, set forth in detail the reasons why
 15 the disclosure to the Expert is reasonably necessary, assess the risk of harm that the disclosure
 16 would entail, and suggest any additional means that could be used to reduce that risk. In addition,
 17 any such motion must be accompanied by a competent declaration describing the parties’ efforts
 18 to resolve the matter by agreement (i.e., the extent and the content of the meet and confer
 19 discussions) and setting forth the reasons advanced by the Designating Party for its refusal to
 20 approve the disclosure.

21 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden
 22 of proving that the risk of harm that the disclosure would entail (under the safeguards proposed)
 23 outweighs the Receiving Party’s need to disclose the Protected Material to its Expert.

24 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
 25 **OTHER LITIGATION**

26 If a Party is served with a subpoena or a court order issued in other litigation that compels
 27 disclosure of any information or items designated in this action as “CONFIDENTIAL” or
 28 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” that Party must:

1 (a) promptly notify in writing the Designating Party. Such notification shall include a copy
2 of the subpoena or court order;

3 (b) promptly notify in writing the party who caused the subpoena or order to issue in the
4 other litigation that some or all of the material covered by the subpoena or order is subject to this
5 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

6 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
7 Designating Party whose Protected Material may be affected.

8 If the Designating Party timely seeks a protective order, the Party served with the subpoena
9 or court order shall not produce any information designated in this action as “CONFIDENTIAL”
10 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a determination by the
11 court from which the subpoena or order issued, unless the Party has obtained the Designating
12 Party’s permission. The Designating Party shall bear the burden and expense of seeking protection
13 in that court of its confidential material – and nothing in these provisions should be construed as
14 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from
15 another court.

16 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
17 **THIS LITIGATION**

18 The terms of this Order are applicable to information produced by a Non-Party in this
19 action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
20 EYES ONLY.” Such information produced by Non-Parties in connection with this litigation is
21 protected by the remedies and relief provided by this Order. Nothing in these provisions should be
22 construed as prohibiting a Non-Party from seeking additional protections.

23 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

24 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
25 Material to any person or in any circumstance not authorized under this Stipulated Protective
26 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
27 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected
28 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the

terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Local Rule IA 10-5. If a Receiving Party's request to file Protected Material under seal is denied by the court, then the Receiving Party may file the Protected Material in the public record unless otherwise instructed by the court.

...

Papers filed with the Court under seal must be accompanied with a concurrently-filed motion for leave to file those documents under seal. See Local Rule IA 10-5(a). The Ninth Circuit has held that there is a presumption of public access to judicial files and records, and that parties seeking to maintain the confidentiality of documents attached to nondispositive motions must show good cause exists to overcome the presumption of public access. *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006). Parties seeking to maintain the secrecy of documents attached to dispositive motions must show compelling reasons sufficient to overcome the presumption of public access. *Id.* at 1180. All motions to seal must address the applicable standard and explain why that standard has been met. The fact that a court has entered a blanket stipulated protective order and that a party has designated a document as confidential pursuant to that protective order does not, standing alone, establish sufficient grounds to seal a filed document.

If the sole ground for a motion to seal is that the opposing party (or non-party) has designated a document as confidential, the designator shall file (within seven days of the filing of the motion to seal) either (1) a declaration establishing sufficient justification for sealing each document at issue or (2) a notice of withdrawal of the designation(s) and consent to unsealing. If neither filing is made, the Court may order the document(s) unsealed without further notice. The Parties shall comply with the requirements of Local Rule IA 10-5, the Ninth Circuit's decision in *Kamakana*, 447 F.3d 1172, and the procedures outlined above, with respect to any documents filed under seal.

13. FINAL DISPOSITION

Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected

1 Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained
2 any copies, abstracts, compilations, summaries or any other format reproducing or capturing any
3 of the Protected Material.

4 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
5 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
6 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant
7 and expert work product, even if such materials contain Protected Material. Any such archival
8 copies that contain or constitute Protected Material remain subject to this Protective Order as set
9 forth in Section 4 (DURATION).

10 IT IS SO STIPULATED.

11 Respectfully submitted,

12 Dated this 23rd day of July 2021.

Dated this 23rd day of July 2021.

13 GARMAN TURNER GORDON LLP

RANDAZZA LEGAL GROUP, PLLC

14 By: /s/ Jared M. Sechrist

By: /s/ Ronald D. Green

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22 IT IS SO ORDERED:

ORDER

23 DATED: July 26, 2021

24 
25 NANCY J. KOPPE
26 UNITED STATES MAGISTRATE JUDGE
27
28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the District of Nevada on _____, 2021 in the case of *My Daily Choice, Inc. v. Lituski*, Case No. 2:20-CV-02232-JAD-NJK. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the District of Nevada for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my Nevada agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]